



June 27, 2022

Chiquita Brooks-LaSure
Administrator
The Center for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Administrator Brooks-LaSure,

On behalf of the nation's Medicaid Directors, the National Association of Medicaid Directors (NAMD) is writing in response to the Center for Medicare and Medicaid Services' (CMS) proposed rule, Implementing Certain Provisions of the Consolidated Appropriations Act, 2021 and Other Revisions to Medicare Enrollment and Eligibility Rules [CMS-4199-P].

The proposed rule would have impacts on state Medicaid programs, especially in their provision of services to members who are dually eligible for Medicare and Medicaid. In general, NAMD is supportive of the proposed rule's new special enrollment periods, strategy for implementing the new Medicare Part B immunosuppressive drug benefit, and provisions to modernize state payments of Medicare premiums. However, there are some operational considerations that CMS should clarify as they develop the final rule.

NAMD is a bipartisan, nonprofit, professional organization representing leaders of all Medicaid agencies across the country. NAMD represents, elevates, and supports state and territorial Medicaid leaders to deliver high value services to the millions of people served by Medicaid and CHIP so they can achieve their best health and thrive in their communities.

Establishing Special Enrollment Periods for Exceptional Conditions

NAMD is supportive of CMS's proposed new special enrollment period to coordinate with termination of Medicaid coverage. Although states were also generally supportive of the other proposed special enrollment periods, NAMD has chosen to focus our comments on the special enrollment period to coordinate with Medicaid termination, as it would have the most direct impact on state Medicaid programs.

In our ongoing work with CMS on the public health emergency unwinding, many states have raised concerns that Medicaid members who became eligible for Medicare may have failed to enroll during their individual enrollment period, as their Medicaid coverage was protected by the Families First Coronavirus Response Act's (FFCRA) continuous enrollment requirement. When the public health emergency eventually ends, however, these individuals may face gaps in coverage and late enrollment penalties. The

proposed special enrollment period would address this potential coverage gap, preventing potentially harmful disruptions in coverage and care.

States did, however, flag potential administrative complications associated with the proposed special enrollment period. Some states' eligibility processes require applying for Medicare as a condition of Medicaid eligibility, which could lead to a confusing series of eligibility determinations. For example, an individual who is dually eligible for Medicare and Medicaid but who missed their individual enrollment period would need to be discontinued from Medicaid, apply for Medicare through the special enrollment period, and then re-apply for Medicaid. CMS should consider allowing individuals who missed their Medicare individual enrollment period to access the special enrollment period without being discontinued from Medicaid if they are likely dually eligible.

Additionally, if the public health emergency were to end before January 1, 2023, states would be allowed to extend the Medicare entitlement back to the first of the month following termination from Medicaid. CMS should clarify if states would also be allowed to buy-in for Medicare premiums retroactively.

Extended Coverage of Immunosuppressive Drugs for Certain Kidney Transplant Patients

In general, NAMD is supportive of CMS's proposed approach to implementing the Consolidated Appropriations Act's (CAA) new Medicare Part B immunosuppressive drug benefit (Part B-ID). However, states note that it will be important to ensure that state Medicaid agencies can distinguish the Part B-ID benefit from full Part B benefits in the various CMS and Social Security Administration (SSA) data sources, and for CMS to verify inactive Medicaid status for proper eligibility determinations and claim adjudication.

State Plan Amendment as Agreement Between State and CMS

NAMD is supportive of the proposal to formally supersede freestanding buy-in agreements with Medicaid state plans. This proposal will simplify the administration of the buy-in programs for states and for CMS.

Limiting State Liability for Retroactive Changes

In general, NAMD is supportive of CMS's proposal to limit state liability for retroactive Medicare Part B premiums for full-benefit Medicaid members under a buy-in agreement to a period no greater than 36 months prior to the date of the Medicare enrollment determination. However, states report that their systems currently have automated processes that may attempt to pay premiums retroactively to the Medicare start date, beyond the proposed 36-month limit. CMS should clarify if they will reject payment transactions that exceed the 36-month limit, or if states will need to amend their systems to prevent these transactions. If states do need to amend their systems, CMS

and the SSA would need to clearly indicate retroactive coverage beyond 36 months in their data exchanges. For example, if the Part A and Part B Enrollment Reason Fields on the Territories & States Beneficiary Query (TBQ) and State Medicare Modernization Act (MMA) files indicate that coverage was granted for a retroactive period beyond 36 months, then states can use this as an indicator to prevent the payment of premiums with start dates earlier than the SSA-generated accretion, which will presumably be limited to 36 months.

Additionally, states report that they may be required to pay retroactive premiums beyond 36 months in situations where an individual loses Medicaid coverage, enrolls into Medicare under the proposed new special enrollment period, and later regains Medicaid eligibility with a retroactive start date that overlaps with the previous termination date. Although this situation is not unique to the proposed special enrollment period for individuals who lose Medicaid coverage, the special enrollment period may make this occurrence more frequent.

NAMD appreciates the opportunity to provide these comments. These proposals are broadly positive and would help ensure coverage continuity and affordability. We look forward to working together to improve our country's systems of care for Medicaid, Medicare, and dually eligible members.

Sincerely,



Allison Taylor
NAMD Board President
Director of Medicaid
Indiana Family and Social
Services Administration



Cindy Beane
NAMD Board President-Elect
Commissioner
West Virginia Department of Health
and Human Resources